

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

RACHEL DURAN,

Plaintiff,

vs.

CIVIL NO. 09-207 RHS/LFG

MANUEL GALLEGOS
and U.S. AIRWAYS, INC.,

Defendants.

ORDER TEMPORARILY STAYING DISCOVERY

THIS MATTER came before the Court on a Fed. R. Civ. P. 16 scheduling conference conducted on May 11, 2009.

Plaintiff Rachel Duran currently has a complaint of alleged unlawful employment discrimination pending before the United States Equal Employment Opportunity Commission (“EEOC”). At present, less than 180 days have expired since the filing of those complaints. Because of the pendency of unexhausted claims, the Court recommended that the parties consider a dismissal of this case without prejudice so as to allow the EEOC to complete its administrative responsibilities, and either resolve the case through a conciliatory conference or, alternatively, to issue its right-to-sue letter. *See EEOC v. W.H. Braum, Inc.*, 347 F.3d 1192, 1200-01 (10th Cir. 2003)(EEOC has exclusive jurisdiction over claim during 180 days following filing of a charge with the EEOC); *see also Stone v. Dept. of Aviation*, 453 F.3d 1271, 1276-77 (10th Cir. 2006)(claim had not matured since plaintiff did not yet have a right-to-sue letter from EEOC).

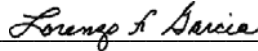
The parties indicated preliminary approval of the suggestion, but before agreeing to a dismissal, they wish to explore the possibility of an early settlement conference in an effort to

resolve this case. As the undersigned magistrate judge is unable to schedule a prompt early conference, the parties wish to utilize the procedures under D.N.M.LR-Civ. 73.3 and designate a Las Cruces magistrate judge to conduct an early settlement conference in Albuquerque. Within the next two weeks, the parties will agree on a magistrate judge, contact the judge's chambers and determine that judge's availability for an early setting in Albuquerque.

If the parties are able to arrange for a prompt Rule 16 settlement conference, no action will be taken on the suggestion to dismiss this litigation without prejudice. Alternatively, if the parties are unable to obtain an early setting, the parties will consider the dismissal without prejudice.

For the time being, save for mandatory disclosures under Fed. R. Civ. P. 26, no discovery may proceed at this time. Thus, discovery is stayed until further notice.

IT IS SO ORDERED.



Lorenzo F. Garcia
Chief United States Magistrate Judge